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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 Jeffery Austin, )

10 Plaintiff, )

11 vs. )

12 Maricopa County Community College )  
13 District, )

14 Defendant. )

NO. CIV 01-1571-PHX-ROS

**SETTLEMENT CONFERENCE ORDER**

15 This case has been referred to United States Magistrate Judge David K. Duncan for a  
16 Settlement Conference.

17 The purpose of the Settlement Conference is to facilitate settlement of this case, if that  
18 is appropriate. It will be conducted in such a manner as not to prejudice any party in the event  
19 settlement is not reached. To that end, all matters communicated to the undersigned expressly  
20 in confidence will be kept confidential, and will not be disclosed to any other party. Rule 408,  
21 Federal Rules of Evidence, applies to all aspects of the Settlement Conference. All  
22 communications and information exchanges made in the settlement process, not otherwise  
23 discoverable, will not be admissible in evidence for any purpose, and shall not be used for any  
24 purpose outside the settlement process itself. At the conclusion of the Settlement Conference,  
25 all documents submitted by the parties shall be returned, destroyed, or otherwise disposed of  
26 in the manner directed by the settlement judge.

27 At the Settlement Conference and subject to modification by the Court depending on the  
28 uniqueness of each case, each party, through counsel or individually if unrepresented, may be

1 asked to give a brief presentation outlining the factual and legal highlights of that party's case  
2 and each party may be asked general and specific questions by the Court. Thereafter, separate  
3 and private caucuses will be held with each party, the party's representative and the settlement  
4 judge.

5 This Order mandating the parties', representatives', and insurers' physical appearance  
6 is intended to increase the efficiency and effectiveness of the Settlement Conference by  
7 reducing the time for communication of offers and expanding the ability to explore the varied  
8 options for settlement, to give the adverse parties the opportunity to hear the rationale and  
9 arguments regarding the likelihood of success of the claims/defenses directly from the lawyers  
10 who will be trying the case, to meet the litigants and representatives themselves and to hear  
11 first-hand the candid, objective comments by a neutral settlement judge regarding the case or  
12 the judicial process.

13 Experience has taught the undersigned that the physical presence, rather than the  
14 availability by telephone, and participation of those individuals with the authority to settle cases  
15 will substantially increase the likelihood of settlement and will lead to more meaningful  
16 negotiations. Consequently, and pursuant to the authority granted to the Court in 28 U.S.C. §  
17 473(b)(5), representatives of the parties with full, complete, and unlimited authority to discuss  
18 and settle the case shall be physically present unless expressly excused by the undersigned by  
19 formal motion and order issued prior to the subject settlement conference for good cause shown.

20 Accordingly,

21 Pursuant to Rule 16, Federal Rules of Civil Procedure, and 28 U.S.C. § 473(b)(5),

22 **IT IS ORDERED** that:

23 1. All parties and their counsel who are responsible for trial of this case **SHALL**  
24 physically appear before the undersigned settlement judge, Courtroom 305, Sandra Day  
25 O'Connor U. S. Courthouse, 401 West Washington Street, Phoenix, Arizona on **Thursday,**  
26 **December 15, 2005, at 1:30 p.m.**

1 If a Defendant is an insured party, a representative of that party's insurer with full,  
2 complete, and unlimited authority to discuss and settle the case **SHALL** physically appear at  
3 the aforesaid date and time. An uninsured or self-insured corporate party **SHALL** physically  
4 appear at aforesaid Settlement Conference through its authorized representative with full,  
5 complete, and unlimited authority to discuss and settle the case.<sup>1</sup>

6 2. Experience also teaches that settlement conferences are often unproductive unless the  
7 parties have exchanged demands and offers of compromise before the conference and have  
8 made a serious effort to settle the case on their own. Accordingly, before arriving at the  
9 Settlement Conference the parties are to negotiate and make a good faith effort to settle the case  
10 without the involvement of the Court. Should the parties wish to submit information regarding  
11 the status of their case, they are requested to submit confidential correspondence directly to the  
12 undersigned. The confidential correspondence must be submitted **at least five (5) business**  
13 **days before the Settlement Conference.** The confidential settlement correspondence shall  
14 **NOT** be filed with the Clerk or served on the parties but rather shall be delivered directly to the  
15 chambers of U.S. Magistrate Judge David K. Duncan. Said correspondence may be transmitted  
16 by facsimile (602-322-7639) or such other methods of transmittal as will assure receipt by the  
17 undersigned by no later than the prescribed deadline.

18 3. If the Settlement Conference is held, the Court will assume that the parties have  
19 agreed to separate meetings (caucuses) with the settlement judge. Ethical rules prohibit *ex parte*  
20 caucuses without such agreement. By appearing at this conference, the Court will deem that  
21 the parties have consented to this procedure and have waived any objection thereto unless a  
22 written objection is filed not less than three (3) business days before the Settlement Conference.

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24 <sup>1</sup>This requirement that a representative physically appear with full, complete, and unlimited authority is only  
25 satisfied where the representative is the decision-maker with full authority to settle the matter: for a party asserting a claim,  
26 this means full authority to stipulate to dismissal and release of all claims; for a party defending a claim, this means full  
27 authority to satisfy the opposing party's existing settlement demand or offer. If it becomes apparent to the Court that a party  
28 has not complied with this requirement, the Court will recess the settlement conference until such time that the noncomplying  
party is in full compliance with this Order. The Court may further order the noncomplying party to show cause why it  
should not pay the opposing party's reasonable attorney's fees and transportation costs incurred in attending the first  
conference.

1           4. Absent good cause shown, if any party, counsel or representative fails to promptly  
2 appear at the Settlement Conference, fails to comply with the terms of this Order, is  
3 substantially unprepared to meaningfully participate in the Settlement Conference, or fails to  
4 participate in good faith in the Settlement Conference, sanctions may be imposed pursuant to  
5 Rules 16(f) and 37(b)(2)(D), Federal Rules of Civil Procedure, which may include an award of  
6 reasonable attorney's fees and expenses and/or a finding of contempt. *See* 28 U.S.C. § 636(e).

7           5. Counsel and any party, if unrepresented by counsel, shall notify the Court in writing  
8 at least ten (10) business days before the Settlement Conference if one or more of the attorneys  
9 or unrepresented parties believes that the Settlement Conference would be a futile act resulting  
10 in an economic waste because, for example, a party or insurer has adopted a position from  
11 which that party or insurer refuses to deviate. The Court will then consider whether the  
12 Settlement Conference would be helpful and, if not, whether the Settlement Conference should  
13 be canceled or other forms of alternative dispute resolution be considered. If there is  
14 disagreement between or among the attorneys or unrepresented parties on this issue or any other  
15 issue, they are instructed to arrange for a telephonic conference with the Court and all counsel  
16 as soon as reasonably practical. If no such conference is arranged, it will be presumed that all  
17 counsel, their clients and any unrepresented party believe that there is a reasonable, good faith  
18 opportunity for settlement, and that the involvement of a settlement judge is needed to  
19 accomplish it.

20           DATED this 24<sup>th</sup> day of October, 2005.

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David K. Duncan  
United States Magistrate Judge